

REMARKS

The Office Action mailed October 12, 2005 has been carefully reviewed along with the references cited therein. In the Office Action, the Examiner rejected all claims under 35 U.S.C. 103(a) using Dry (U.S. Patent 6,815,724) as the primary reference. More specifically, the Examiner rejected claims 1 and 28-30 under 35 U.S.C. 103(a) as being unpatentable over Dry. The Examiner rejected claims 2-16 as being unpatentable over Dry in view of Tanuma et al. (U.S. Patent No. 5,008,582). Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Dry as applied to claim 1 above, and further in view of Edelman et al. (U.S. Patent 4,501,319). The Examiner rejected claims 18-25 under 35 U.S.C. 103(a) as being unpatentable over Dry in view of Edelman et al. (U.S. Patent 4,501,319) as applied to claim 17 above, and further in view of Edelman et al. (U.S. Patent 4,406,323). The Examiner rejected claims 26-27 under 35 U.S.C. 103(a) as being unpatentable over Dry as applied to claim 1 above, and further in view of Edelman et al. (U.S. Patent 4,501,319). The Examiner rejected claims 31-32 under 35 U.S.C. 103(a) as being unpatentable over Dry as applied to claim 28 above, and further in view of Edelman et al. (U.S. Patent 4,501,319). Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dry as applied to claim 1, and further in view of Edelman et al. (U.S. Patent 4,501,319). Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dry in view of Glezer et al. (U.S. Patent No. 6,588,497).

The subject patent application was filed on December 3, 2003 and claimed priority to provisional patent application Serial No. 60/459,238, which was filed on March 31, 2003. Dry was filed May 5, 2003 and issued on November 9, 2004. Dry also published as a patent application on December 18, 2003. Since Dry's earliest publication, i.e. December 18, 2003, was after the filing date of the subject application, i.e. December 3, 2003, Dry can only be applied as a § 102(e) reference. As a 102(e) reference, the effective date of Dry is May 5, 2003, the filing date for Dry. The provisional patent application Serial No. 60/459,238, to which the subject application claims priority, was filed on March 31, 2003, which is before the effective date of Dry. Any claims that are fully supported under § 112, first paragraph, by the provisional application cannot be rejected by Dry, since Dry is not prior art.

In addition to incorrectly applying Dry, the Examiner erred when rejecting claim 17, 26 and 33, and those claims that depend from claims 17 and 26, as being unpatentable

over Dry (even if it can be considered as prior art) as applied to claim 1 above, and further in view of Edelman et al. (U.S. Patent 4,501,319). The Examiner relies cases selected from the MPEP, specifically § 2144.07, that indicate that the selection of a known material based on its suitability for its intended use can support *prima facie* obviousness. The situation with regard to the rejected claims differs from the situations involved in the cases cited at MPEP § 2144.07. First, *In re Leshin* involved selecting a known plastic to make a container of a type made of plastics prior to the invention. Here, Applicant is not simply reading a list and selecting a known device to meet known requirements. Here, Applicant claims a structural difference between that which is taught by Edelman et al. (U.S. Patent 4,501,319).

Furthermore, the Examiner has provided no basis for his motivation that a flexible hinge could allow for greater vibration of the multiple plates in Edelman et al. (U.S. Patent 4,501,319) or elsewhere in the prior art. In another case that is discussed at MPEP § 2144.07, the court held a machine that differed from the prior art only in that the brake was hydraulically operated rather than mechanically operated was held to be obvious over the prior art *in view of references which disclosed hydraulic brakes for performing the same function*. See *Ryco, Inc. v. Ag-Bag Corp.*, 8 USPQ2d 1323. The Examiner has failed to show any further references and therefore has failed to establish *prima facie* obviousness for claim 17, and those claims that depend from claim 17.

With regard to claim 34 and 35, the Examiner erred when combining Dry and Glezer. As the Examiner indicates, Glezer discusses in the BACKGROUND OF THE INVENTION section that the “use of fans also requires relatively large moving parts in order to have any success in cooling a heated body or microelectric component.” Glezer then attempts to overcome this inadequacy. Dry, on the other hand, teaches that the medium moving device is a fan (col. 3, lines 55). Accordingly, Glezer teaches away from Dry and therefore one skilled in the art would not combine the two.

Even though the inappropriateness of the Examiner's rejections of only certain claims was discussed above, this should not be taken as an admission that Applicant agrees with the position taken by the Examiner with regard to the other rejections. Since it is apparent that the Examiner cannot properly apply Dry as a reference to any claims that find support in the provisional application, Applicants have responded to every ground of rejection in the subject office action.


CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application are now in condition for allowance. Accordingly, an early indication of the same is earnestly solicited. In any event, should the Examiner consider personal contact advantageous to the disposition of this case, he is encouraged to telephone the undersigned at the number listed below.

Respectfully submitted,

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January 12, 2006
Date

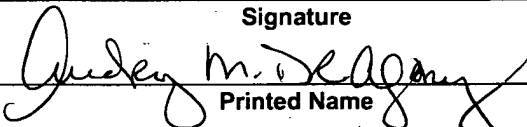


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